IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMARY SUIT NO. 1566 OF 2004

Naresh Jivaj Solanki .. Plaintiff

versus

Manohar Baijnath Gupta .. Defendant

...

Mr.B.N. Shah i/b P.I. Vakil for the plaintiff.

None for the defendant.

CORAM : D.G. KARNIK,J.

DATED : 12th April 2005.

P.C.:

1. Heard the learned counsel for the plaintiff. None present for the defendant.

2. The plaintiff has filed on record affidavit of service of writ of summons on the defendant sworn in by K.K. Naik, bailiff in the office of Sheriff of Mumbai on 16th December 2004. From the said affidavit, it appears that the writ of summons was served on the defendant on 16th July 2004. The

defendant did not file an appearance within a period of 10 days. The vakalatnama was to be filed on behalf of the defendant on 25th October 2004 by Mr.M.V. Bopardikar. The vakalatnama does not appear to have been accepted and kept under objection. In view of the objection that appearance was not filed within a period of 20 days, no Chamber Summons was taken out for condonation of the delay in filing the appearance. Thus, the matter is posted on board for ex-parte hearing.

3. The plaintiff has filed on record the document viz. the original cheque for Rs.2,75,000/- issued by the defendant, the dishonour memo and office copy of the notice. The documents are collectively marked Exhibit-A. I have perused the plaint and the original documents filed on record. For valuable consideration, the defendant issued a cheque for Rs.2,75,000/-. The cheque was dishonoured when presented for payment. Hence, the plaintiff has field this suit for recovery of the money under a cheque and interest u/s.80 of the Negotiable Instruments Act.

4. In the absence of filing of an appearance within 10 days, the plaintiff is also entitled to a

decree under Order 37 Rule 3(6) of the Code of Civil Procedure. Hence, I pass the following order:-

5. Suit of the plaintiff is decreed as follows:

6. The defendant shall pay to the plaintiff a sum of Rs.3,79,000/- together with interest on the principal sum of rs.2,75,000/- at 9% p.a. from the date of the suit till payment and all costs of the suit.

D.G. KARNIK,J